Appointing a Guardian for One's Muslim Children: A Guide for South Carolina Muslim Residents

In the Name of Allah, Most Gracious, Most Merciful.

Choosing a Guardian:

A South Carolina Last Will and Testament may be used to designate a guardian for any minor child. Testators who have minor or dependent children may use a will to name a guardian to care for their children if there is no surviving parent to do so. Therefore, a Muslim residing in South Carolina is permitted to appoint a guardian for their dependent children. If a will does not name a guardian, a court may appoint someone who is not necessarily the ideal person whom the testator would have chosen. Thus, it is imperative for every Muslim with children or dependents to become aware of how the courts will address their affairs if no will exists.

A guardian is a court appointed individual whom has been granted legal custody over another person with the authority to make decision on their behalf. In addition to dependent children, individuals eighteen and older who suffer from either a mental or physical illness/disability, geriatric old-age, chronic substance abuse, or simply lacks adequate comprehension, insight or competence to make responsible decisions regarding their personal affairs, and have not executed the proper legal documents to name an agent to make decisions on their behalf are among those whom are in need of a guardian. Also, there is no legal limit to the number of guardians that a child can have. One can be appointed for the child and another can be appointed for the child's property; however, the number of guardians should be kept to a minimum.

SECTION 21-21-25 of South Carolina Code of Laws, pertaining to: "Disposition of custody of minors," declares that the father or mother (age twenty-one and under) of any child (under age twenty-one) who is not married, may by deed executed and recorded according to law or by a valid Last Will and Testament (made and probated according to law) may dispose of the custody and tuition of their child while it remains under the age of twenty-one years to any other person, in possession or remainder. It is also important to note that no deed is valid

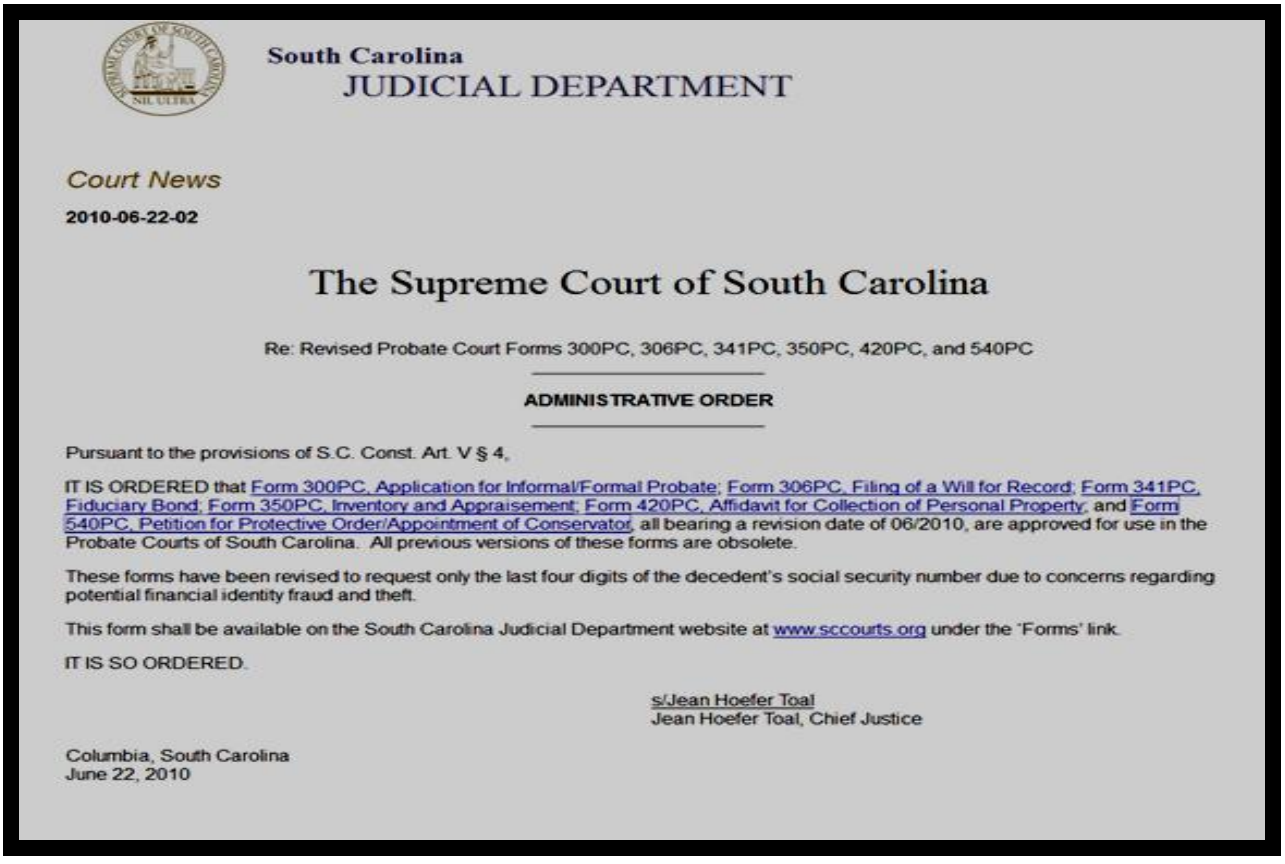
unless signed by both father and mother. Also if both parents are living and no such deed exists, except a deed to an agency or department of the State that is authorized by law to receive or place the custody of children, the deed will be considered effective unless approved upon petition by a family court or family court judge of this State. In view of this fact, nothing in SECTION 21-21-25 of South Carolina Code of Laws, pertaining to: Disposition of custody of minors may be construed to abrogate, lessen, or interfere with the right and duty of a court of competent jurisdiction at any time to transfer and assign the custody of a child for its best interest. With this being said, the role of a guardian is basically to provide one's dependents with a residence, provisions, maintenance, and any other service pertaining to their overall well-being. Thus, in a nutshell, a guardian is basically a support structure that one depends on to take care of their loved-ones and affairs in the event that they become incapable of performing said tasks. Therefore, an ideal guardian for a Muslim would be an immediate family member, an adult child, a parent or sibling. A testator usually chooses a family member or friend to perform this function, and often names an alternate; however, a Muslim testator is restricted to only choosing from those individuals that comply with Islamic law. Also, potential guardians should know that they have been chosen, and should fully understand

what may be required of them; i.e., what the role of a guardian entails.

This function is lawful under Islamic law provided that both parents are deceased or deemed unfit under the Quran and sunnah. However, one cannot take a child from a parent who is a practicing Muslim and award custody to another while said parent is still alive and capable of providing for said child. In the case of minor children where both parents have died, custody is awarded in accordance to the Islamic maternal hierarchy; i.e., the maternal grandmother, the paternal grandmother, the Full Sister, etc. In cases of dispute, the Islamic Court will appoint custody in its wisdom. However, in South Carolina, the state will address this matter according to its established laws and guidelines (Dept. of Social Services – Foster care, etc.) Furthermore, under Islamic law the custody of a child and a child's inheritance are often dealt with separately. A guardian (usually male) will often be appointed to take responsibility for the inheritance, and is entitled to reasonably dispose of assets on account of his ward as he deems appropriate.

Guardianship is governed by the CARE OF CHILDREN ACT, which replaced the GUARDIANSHIP ACT of 1968. Guardianship has a number of different types of guardians, such as natural guardians (the parents), testamentary guardians, new partners

appointed as guardians by the parents, and court-appointed guardians. In Islamic law, guardianship falls under three main categories; namely, natural guardians, testamentary guardians, and guardians appointed by the court. However, the most common guardianships are minor child guardianships, adult guardianships and emergency proxy guardianships. In South Carolina, to begin the guardianship proceeding a Summons; one must complete a Petition for Finding of Incapacity and Appointment of Guardian (Form 530PC); pay a $150.00 filing fee; complete a Petition to Appoint a Visitor and Proposed Order; complete the Petition to Appoint Two Designated Examiners and Proposed Order (Form 533PC); and complete a SLED report for the proposed Petitioner.



South Carolina
JUDICIAL DEPARTMENT

Court News

2010-06-22-02

The Supreme Court of South Carolina

Re: Revised Probate Court Forms 300PC, 306PC, 341PC, 350PC, 420PC, and 540PC

ADMINISTRATIVE ORDER

Pursuant to the provisions of S.C. Const. Art. V § 4,

IT IS ORDERED that Form 300PC, Application for Informal/Formal Probate; Form 306PC, Filing of a Will for Record; Form 341PC, Fiduciary Bond; Form 350PC, Inventory and Appraisement; Form 420PC, Affidavit for Collection of Personal Property; and Form 540PC, Petition for Protective Order/Appointment of Conservator, all bearing a revision date of 06/2010, are approved for use in the Probate Courts of South Carolina. All previous versions of these forms are obsolete.

These forms have been revised to request only the last four digits of the decedent's social security number due to concerns regarding potential financial identity fraud and theft.

This form shall be available on the South Carolina Judicial Department website at www.sccourts.org under the 'Forms' link.

IT IS SO ORDERED.

s/Jean Hoefer Toal
Jean Hoefer Toal, Chief Justice

Columbia, South Carolina
June 22, 2010

FORM 530PC

COUNTY OF: _____)
)
IN THE PROBATE COURT
)
)

IN THE MATTER OF : _____
(Alleged Incapacitated Person)

CASE NUMBER: _____

_____
PETITIONER

PETITION FOR:

vs.

☐ **FINDING INCAPACITY**
☐ **APPOINTMENT OF:**

_____

_____
RESPONDENT

☐ **GUARDIAN**
☐ **SUCCESSOR GUARDIAN**

I. **ALL PETITIONERS MUST COMPLETE THIS SECTION.**

1. Give your relationship to the alleged incapacitated person, if any, and your interest in this proceeding.

_____

2. Information -- Alleged Incapacitated Person

Name: _____ Age: _____
Date of Birth: _____
Address: _____
City/State/Zip: _____
Telephone: _____

To my knowledge, above named ☐ *DOES* ☐ *DOES NOT* have a Health Care Power of Attorney.
To my knowledge, above named ☐ *DOES* ☐ *DOES NOT* have a Living Will (Declaration of a Desire for a Natural Death.)

3. Venue for this proceeding is in this county because the alleged incapacitated person:

☐ resides in this county.
☐ is present in this county.
☐ is admitted to an institution pursuant to an order of a court of competent jurisdiction in this county.

4. Information—Family of alleged incapacitated person, including dates of birth of minors. If there are no minors, so state.

Name	Date of Birth	Address	Relationship to Alleged Incapacitated Person

(use additional sheet if necessary)

6. Is it necessary to appoint a temporary guardian for the alleged incapacitated person until a hearing can be held on this Petition?
☐ NO ☐ YES If yes, please state the emergency reasons.

_____
_____
_____
_____

III. **ALL PETITIONERS MUST COMPLETE THIS SECTION.**

1. ☐ I request that the Court set a time and place of hearing on this Petition and that the Court determine that the above person is incapacitated.

2. ☐ I request that the Court determine that the need for the appointment of a guardian is proper; that the Court appoint _____ as the Guardian for the above person; and, that Letters of Guardianship be issued to the guardian.

3. The following persons are required by statute to be given notice of the time and place of hearing on this Petition: (SCPC 5-309)

Name	Address	Relationship

VERIFICATION

The undersigned, being sworn states: That the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief.

SWORN to before me this _____ day of 20____

_____
Notary Public for South Carolina
My Commission Expires: _____

Signature: _____
Name: _____
Address: _____
_____
E-mail: _____
Telephone (O): _____
(H): _____

Attorney: _____
Address: _____
_____
E-mail: _____
Telephone (O): _____

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Guardian of the incapacitated person of _____.

Sworn to before me this _____ day of 20_____

_____
Notary Public for South Carolina
My Commission Expires: _____

Signature: _____
Name: _____
Address: _____
_____
E-mail: _____
Telephone (O): _____
Telephone (H): _____

In South Carolina under the general structure of guardianships, parents are usually classified as natural guardians, with the mother automatically being a guardian in the eyes of the court. However, contrary to Islamic law, the father is not automatically a guardian. The father becomes a guardian under South Carolina guardianship laws "only" in instances where he was married to, or was in a civil union with the child's mother at any time from when the child was conceived until it was born; namely, if the child was conceived before July 1, 2005 and he was living with the child's mother when the child was born; the child was conceived on or after July 1, 2005 and he was living with the child's mother at any time between conception and the birth; or he was recorded as the father of the child on the birth certificate on or after July 1, 2005.

When the father is not automatically a guardian, he can apply to the court for it to appoint him as such. The court is likely to grant the father's request unless it deems that said action is against the child's best interests. However, according to Islamic law, the father is always a guardian unless he apostates from Islam or is plagued by personal issues which would impair his ability to adequately provide for his children. Furthermore, if the father is automatically a guardian, he can ask the court to officially declare him as a natural guardian

since an instance may arise where he and the mother of his children have separated and the mother does not want him to have an active role in the children's upbringing. In the event that a parent desires that the other is prohibited from having an active role in the child's upbringing, an attorney should be consulted about how to prove to the court that the other parent is unfit to raise the child in question. Nevertheless, in addition to being a guardian, under Islamic law, the father is always recognized as a natural guardian. The consensus in Islam is that the father is vested with the financial burden of providing for his wife and children. This fact is evident from Surah Al-Nisa (4:34) which reads, **"(husbands) are the protectors and maintainers of their (wives) because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore, the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard..."** As a result, the father is awarded the legal guardianship role. However, in the case of divorce, where the mother is a practicing Muslim, she will have more right to the rearing of her young children than their father.

In recognition of an infant's need for female care, the consensus is that the mother has the first choice with regard to a child's physical custody; because, she is recognized as the

fittest person to take care of the children. This fact is evident from the following hadith collected by Ibn Majah that was narrated by Amr Ibn Shu'aib: "**A woman came to the Prophet (P.B.U.H.) and said: 'Truly my belly served as a container for my son here, and my breast served as a skin-bag for him (to drink out of) and my bosom served as a refuge for him; and now his father has divorced me, and he (also) desires to take him away from me.' The Prophet (P.B.U.H.) said: 'You have a better right to have him, as long as you do not marry again**.'" With this being said, Islam recognizes the mother as generally the fittest person to take care of the children because of the innate love and tenderness she feels for them resulting from the bond she established during pregnancy, nursing, and childhood. As a result, even after divorce, the mother is entitled to receive custody wages from the father to help her maintain the children. However, to reiterate from the above mentioned hadith, the mother forfeits this right once she remarries; i.e., the period of female custody ends once the child reaches a certain age of custodial transfer or when she takes another husband. Moreover, if the mother forfeits her right as primary caretaker of the children, there will be no compulsion on her to retain this obligation; because, unless it is determined that she forfeited this right out of duress, the decision will be accepted as being in the best interest of the children.

It is also important to note that although the Muslim mother is to be awarded custody of the children upon divorce, Islam grants the Muslim father the right to have access to his children. The father has the right to control the education and religion of his minor children; in addition to their upbringing and movement. Thus, so long as the father is alive, he is the sole and supreme guardian of his minor children; which is the reason why he remains financially responsible for their maintenance and education even though they may be under the care of their divorced mother or one of her relatives. However, there is a difference of opinion among the Islamic schools of thought regarding the age when custody is shifted from the mother to the father. Some schools suggest as young as age seven, when the child begins learning how to make salat (ritualistic prayer - worship), at puberty, or even as late as the age of marriage, as in the case of daughters. In any event, after the determined age of independence, the choice is up to the child as to which parent they prefer to live with.

In summary, the father's right of guardianship extends only over his minor legitimate children. Moreover, he is automatically not entitled to guardianship or to custody of his minor illegitimate children. It is also important to remember that parents continue to be guardians even if they split up. If

both parents agree, or the South Carolina court in question orders that only one of them will have day-to-day care for their children, the other parent will continue to maintain certain responsibilities of guardianship; namely, contributing to their child's personal development and assisting them with making big decisions. In view of these facts, it is important for one appointed as a guardian to be aware that their custody granted by the courts does not terminate a parent's relationship with their child like an adoption would; which is an illegal practice according to Islamic law; i.e., replacing a child's surname and replacing it with the surname of one intending to classify the child in question as their own via adoption. Moreover, electing to appoint a guardian generally does not categorize a parent as unfit by the courts or society. Among those individuals whom it may be deemed necessary for them to appoint a guardian are those Muslims living in a non-Muslim land whom want to ensure that their children are raised according to the Quran and sunnah, Military parents that are deployed, a single parent, etc.

Any individual selected to serve as one's guardian is also permitted to appoint someone else to be a guardian after their demise in a will or deed. The individual whom is appointed as the new guardian by the current guardian is referred to as a "testamentary" guardian. The position of a testamentary guardian

becomes a joint guardianship with all other guardians. However a surviving parent or guardian can dispute the appointment of a testamentary guardian in court if they are dissatisfied with either the decision or the individual selected. An example of this would pertain to an instance wherein a Muslim guardian appoints another Muslim who is either a member of a deviant sect or is deeply engaged in biddat (innovative practices not approved by the Quran or sunnah) as a testamentary guardian; or the testamentary guardian is one with a history of gambling problems, substance abuse, or deviant behavior. In this event, the Muslim parent or other guardian can refer the matter to the court in question in an attempt to have the unwanted guardian removed. This point is evident from **SECTION 21-21-35 of South Carolina Code of Laws, pertaining to: Persons against whom disposition of custody is valid, which** declares that the disposition of the custody of the child as provided in Section 21-21-25 is effective against any person claiming the custody of the child as guardian. **SECTION 21-21-45 of South Carolina Code of Laws, pertaining to: Action by custodian for recovery of children and damages,** declares that any person to whom the custody of any child has been so disposed or devised may maintain an action against any person who wrongfully takes away or detains the child for the recovery of the child and may recover damages in the action for benefit of the child.

Moreover, electing to pursue legal assistance to correct the dilemma is imperative because although a testamentary guardian does not have the role of providing day-to-day care for the child, they can apply to the Court for a parenting order that would legally grant them this right.

In the event that joint guardians are unable to agree on an issue, any of the guardians in question can ask the Family Court to arrange free and confidential counseling for them in an effort to resolve the dispute. However, if counseling is ineffective, the guardians can apply to a Family Court for further instructions. If this is the case, Family Court can make any ruling that it deems necessary with regard to what is in the best interest of the child. The court in question will also grant the child a reasonable opportunity to voice their opinions and will take the child's views into account. It is also important to note that under Islamic law, the father has full power when it comes to making a testamentary appointment of guardian. In the absence of the father and his executor, the grandfather has the power of appointing a testamentary guardian. With this being said, it is clear that the mother has no power with regard to appointing a testamentary guardian for her children. However, there are two cases wherein the mother is permitted to appoint a testamentary guardian for the property of

her minor children. The first, instance is when she has been appointed as a general executrix by the will of the child's father, wherein she can appoint an executor by her will. The second instance is in respect to her personal property. The mother can also be appointed a testamentary guardian by either the father or grandfather whenever they are permitted to exercise this authority. Even the appointment of a non-Muslim mother as testamentary guardian is permissible.

South Carolina law also permits the spouse of a person with disabilities or parent of an incapacitated person to make a testamentary appointment of a guardian in their will. The testamentary appointment by a spouse or parent comes into effect after the incapacitated person and their caregiver or the nearest adult relative has received a twenty days written notice and the guardian files acceptance of appointment in the court. When both a spouse and a parent appoint guardians in their wills, the appointment of the spouse has priority. Testamentary guardianship also permits a parent with a new partner (which is an illegal relationship in Islam) who has been sharing day-to-day care of the children for at least a year, the opportunity to appoint the new partner as a guardian of the children in question under the Care of Children Act. The Act pertains to a parent and their new partner, whom are married, in a civil

union, or in a de facto relationship. Moreover, in instances where the other parent of the children is still living, the ACT requires both parents to make the appointment of the new partner as guardian. Also, in instances where the new partner in question cannot be appointed as a guardian due to the restrictions contained in the Care of Children Act such as cases where the new partner has been involved in Family Court proceedings over day-to-day care (custody) or contact (access), or had a domestic violence protection order made against them, they are permitted to apply to the Family Court to have it make the appointment. For more details, visit the Family Court website at **www.justice.govt.nz/family.**

A child age sixteen or older in the state of South Carolina can ask the Family Court to intervene and give its permission, which would overrule the guardian's decision in instances where they disagree or is unhappy about an important decision that their guardian or guardians have made; such as denying them the opportunity to get married. However, to reiterate, children ages 16 or 17 must obtain written permission from their guardian before they can get married or enter into a civil union or de facto relationship; which are illegal relationships in Islam. It is important to note that in South Carolina a parent's guardianship status does not grant them

unlimited freedom to make decisions for their children; because, the law recognizes that as a child approaches adulthood their maturity and level of understanding entitles them to make decisions for themselves regarding particular issues. As a result, the child in question can ask the Family Court to give its permission, which could then overrule the guardian's decision. However, in certain instances the Family Court's ruling in favor of the child can do the child in question a great disservice; such as overruling a Muslim guardian's decision to deny the child in question the right to engage in dating or to marry someone that is not acceptable under Islamic law. In this instance, the Family Court's ruling in favor of the child could result in the child in question committing fornication or contracting an illegal marriage.

A South Carolina Family Court can also deprive a parent of guardianship or remove a testamentary or court-appointed guardian whenever a parent/guardian of a child, a partner of a parent of a child (whether they are married, in a civil union, or in a de facto relationship, as long as they have been sharing day-to-day care of the child; a child's grandparent, aunt, uncle, brother or sister, including half-brothers and half-sisters, have applied to the court for it to perform this action. However, it should be noted that the court in question

will not deprive a parent of guardianship unless it is certain that the parent in question is for some grave reason unfit to be the guardian or that they are simply unwilling to be a guardian.

With regard to deciding whether to remove a testamentary or court-appointed guardian, the only issue for the court is the child's welfare and best interests. Therefore, if one wishes to apply to the court to be appointed as a guardian, or if an application has been made to the court to deprive one of guardianship, it is imperative that they obtain legal advice regarding these matters. It is also important for one pursuing guardianship to become familiar with **SECTION 21-21-55 of South Carolina Code of Laws, pertaining to: Possession of property conveyed, devised, or bequeathed to child**, which maintains that any person to whom the custody of any child has been so disposed or devised may take into their possession to and for the use, support, and education of the child all property, real and personal, which by deed or will has been conveyed, devised, or bequeathed to the child, until said child attains the age of twenty-one years or for a lesser time as may be fixed by the deed or will, and may receive and receipt for the proceeds of any life insurance taken out by the parent for the benefit of the child and do all acts in relation to the child which a guardian appointed according to law might do. The family court

may, in its discretion, require a return of the property and an annual accounting for the rents, profits, and income of the property.

It is also important to note that a Muslim residing in South Carolina with the objective of leaving bequest for their children is permitted to appoint a guardian under the Uniform Transfers to Minors Act. One can utilize the Uniform Transfers to Minors Act to addresses property management so that the probate court does not need to appoint someone to address matters on their behalf. What is more, guardianships for minors are not under the authority of the Probate Court; rather, under the jurisdiction of the Family Court. However, in order to avoid the Probate Court appointing a guardian for one's adult dependents, one should execute the proper legal documents, such as a will, Health Care Power of Attorney, and/or a Durable Power of Attorney. The choice of guardianship often affects other will provisions; because, the testator may want to provide financial support to the guardian in raising surviving children. Nevertheless, if the capacity of the adult changes or the incapacitated person in question passes away, the guardian in question should file a final guardian report and Petition for Discharge (Form 571PC).

FORM 571PC

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF: _____)
) **PETITION FOR DISCHARGE**
IN THE MATTER OF: _____)
) CASE NUMBER: _____

☐ **GUARDIANSHIP**
☐ **CONSERVATORSHIP**

Petitioner: _____

1. Nature of interest of undersigned: _____

2. Other pending proceedings relating to the above ward/protected person are:

3. RELIEF SOUGHT:

☐ A. Termination/Discharge because:
- ☐ Ward/Protected Person died on _____ .
- ☐ Guardian/Conservator died on _____ .
- ☐ Protected Person has reached the age of eighteen or has married.
- ☐ Guardian/Conservator was adjudicated incapacitated on _____ , at _____ .
- ☐ Guardian/Conservator hereby offers resignation and requests Court acceptance.
- ☐ Will establishing Testamentary Guardianship was denied probate in a formal hearing on _____ at _____ .

☐ B. Readjudication of Incapacity
- ☐ The ward/protected person is no longer incapacitated.
- ☐ Special leave of Order dated _____ prohibiting petition prior to _____ is hereby requested because: _____
_____

4. I request that the Court: (check all that apply)

☐ A. Consider and approve the final accounting.
☐ B. Adjudicate as to all unsettled liabilities
☐ C. Discharge, or set forth the conditions of the termination of the appointment of the Guardian/Conservator, and the release of the Fiduciary's bond, if any.
☐ D. Terminate the office.
☐ E. Other: _____

☐ F. Issue an Order of same, together with such other Orders as the law may require and as the Court may deem applicable and proper.

5. By copy of this petition, notice has been given to all interested persons as required by law.

SWORN to before me this _____ day of _____, 20 _____

_____
Notary Public for South Carolina
My Commission Expires: _____

Signature: _____
Name: _____
Address: _____
_____
Telephone (O): _____
(H): _____

ORDER TO SEND VISITOR
(Guardianship Only)

IT IS HEREBY ORDERED that _____ be sent as visitor to the place where the incapacitated person resides to observe conditions and report in writing to the Court (Form #531PC) prior to the hearing date set below.

Executed this _____ day of _____, 20_____.

_____
_____, Probate Court Judge

ORDER FOR HEARING

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE: _____
TIME: _____
PLACE: _____

Pursuant to 62-1-401, the petitioner is ordered to give notice of this hearing at least twenty (20) days prior to the hearing date.

Executed this _____ day of _____, 20_____.

_____
_____, Probate Court Judge

A hearing may be held before the guardianship is terminated to determine capacity. If death is the reason for termination then a death certificate should be provided.

To reiterate, an ideal guardian for a Muslim would be an immediate family member, such as an adult child, a parent, or sibling, etc. However, if there are no immediate family members then the Court will look to other relatives or interested individuals, such as a neighbor or close friend. What is more, under certain circumstances, the Court may even look into the possibility of appointing an institutional conservator; which is a court appointed individual or entity that handles the management of financial affairs or property. However, in view of these facts, it is important to note that a Muslim residing in South Carolina must exhaust every effort to appoint only individuals that the dependent in question is permitted to socialize with in an un-chaperoned environment; such as those individuals whom it is illegal to contract a marriage with.

Conservatorships in South Carolina fall under two main categories; namely, those involving minors receiving funds exceeding $10,000 from an inheritance; insurance proceeds, other beneficiary designated funds, personal injury settlements or sale of real estate, and those involving individuals over the age of eighteen that suffer from a mental/physical illness or

disability. Additional factors requiring the appointment of a conservator include mental deficiency, advanced age, chronic substance abuse, or any other cause to the extent that an individual lacks sufficient understanding, insight, or capacity to make responsible decisions concerning their financial affairs. It is also important to note that all of these factors are in the event that the proper legal documents have not been executed, such as a Durable Power of Attorney naming an agent for decision-making. With this being said, just as the matter pertains to guardians, an immediate family member, such as spouse, adult child, parent or adult sibling, would be an ideal conservator. Also, as guardianships are handled in instances where there are no immediate family members, the Court addressing the issue of conservatorship will look to other relatives or interested individuals, such as a neighbor or friend of the incapacitated adult or minor. Nevertheless, to reiterate, it is important for every Muslim to remember that one must exhaust every effort to appoint only individuals that one's dependents are permitted to socialize with in an un-chaperoned manner. Lastly, the need for financial or legal expertise may lead the Court in question to look for corporate entities, accountants or lawyers to serve in this capacity.

It is therefore imperative for Muslims involved in matters pertaining to a conservatorship proceeding for a minor to note that due to a recent South Carolina policy change, the Court in question will appoint a Guardian Ad Litem for all incoming cases. In addition, a Summons, Petition for Appointment of Conservator (Form 540PC), a $150.00 filing fee, a Proposed Guardian ad Litem/Counsel Order [minors 14 and older must consent to the proposed counsel] (Form 532PC), a certified copy of the birth certificate for the minor, a SLED report, a credit report for the proposed Petitioner, a copy of the proposed conservators drivers license, and a copy of the proposed conservators social security card are required by the Courts for conservatorship proceeding for a minor. Furthermore, to begin a Conservatorship proceeding for an adult, the Court requires a Summons; Petition for Appointment of Conservator (Form 540PC); $150.00 filing fee; Petition to Appoint Two Designated Examiners and Proposed Order (Form 533PC); Proposed Guardian ad Litem/Counsel Order (Form 532PC); SLED report and Credit report for the proposed Petitioner, a copy of the proposed conservators driver’s license, and a copy of the proposed conservators social security card.

FORM 532PC

STATE OF SOUTH CAROLINA)
)
COUNTY OF:)
)
IN THE MATTER OF:)
)
)

IN THE PROBATE COURT

ORDER APPOINTING COUNSEL

CASE NUMBER:

Upon reading the petition in the above matter, this court finds that the appointment of counsel is appropriate for the allegedly incapacitated person or minor.

THEREFORE, IT IS HEREBY ORDERED that , Esquire, be appointed attorney for the allegedly incapacitated person or minor and granted the powers and duties of that position. The attorney also has the powers and duties of a guardian ad litem.

Executed this day of , 20 .

_____
, Probate Court Judge

ACCEPTANCE

I agree to serve as attorney and guardian ad litem in this matter.

Executed this day of , 20 .

Signature: _____
Name: _____
Address: _____
_____
Telephone (O): _____
(H): _____

FORM 533PC

STATE OF SOUTH CAROLINA PROBATE COURT

COUNTY OF

IN THE MATTER OF

CASE NUMBER

ORDER APPOINTING PHYSICIAN/EXAMINER

☐ GUARDIANSHIP
☐ CONSERVATORSHIP

Upon reading the petition in the above matter, I hereby appoint _____ M.D. and _____, who are directed to report to this Court their findings as to the person's mental condition, utilizing the Court's established examiners guidelines, and their opinion as whether the captioned person is an incapacitated person*; and if so, whether that person needs a guardian** and/or conservator*** to be appointed by this Court for him or her.

Executed this day of , 20 .

_____
, Probate Court Judge

* "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic us of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property.

** A "guardian" of an incapacitated person has the same powers, rights, and duties respecting his ward that a parent has respecting his unemancipated minor child; has custody of the person of his ward; shall make provision for the
care, comfort, and maintenance of his ward and arrange for training and education; and may give consents for medical or other professional care, counsel, treatment, or service.

*** A "conservator" manages, protects, and preserves the estate, assets, money or property of any incapacitated person; and extends funds as needed for the support, care, and welfare of the person or those entitled to be supported by him.

FORM 540PC

STATE OF SOUTH CAROLINA)
)
COUNTY OF: _____)
)
IN THE MATTER OF: _____)

IN THE PROBATE COURT

CASE NUMBER: _____

_____
Petitioner

vs.

_____
Respondent(s)

PETITION FOR:

☐ **MINOR**
☐ **ADULT**

☐ **PROTECTIVE ORDER**
☐ **APPOINTMENT OF CONSERVATOR**

Petitioner: _____

1. Give your relationship to the alleged incapacitated person, if any, and your interest in this proceeding.

   _____

2. Information -- Minor/Allegedly Incapacitated Person

   Name: _____ Age: _____
   Date of Birth: _____
   Last Four Digits of
   Social Security Number: _____
   Address: _____
   City/State/Zip: _____
   Telephone (Home): _____ (Office/other): _____

   To my knowledge, the above-named ☐ DOES ☐ DOES NOT have a Will

   To my knowledge, the above-named ☐ DOES ☐ DOES NOT have a Power of Attorney

3. Venue for this proceeding is proper in this county because the above minor/alleged incapacitated person:
   ☐ resides in this county
   ☐ does not reside in this county but has property in this county

4. The name and address of the above person's guardian, if any, is:

   _____

5. Information -- Family (list nearest relative first) of minor/alleged incapacitated person, including dates of birth of minors:

Name	Date of Birth	Address	Relationship

(use additional sheet if necessary)

6. The following is a general statement of the property, assets, and income of the above person, together with an estimate of the value thereof: (A full inventory, Form #550PC, shall be completed and filed with the Court within thirty days of appointment.)

Description	Value

7. The appointment of a conservator for the above person is necessary because (state reasons justifying appointment):

_____

8. I request the appointment of:

Name: _____
Address: _____
_____
Telephone (O): _____
Telephone (H): _____
Email: _____

whose priority for appointment as conservator for the above person is as follows:

- ☐ fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the minor/alleged incapacitated person resides
- ☐ individual or corporation nominated by the minor/alleged incapacitated person (if fourteen or more years of age and deemed mentally capable of making such a choice)
- ☐ attorney-in-fact appointed by protected person (Pursuant to S.C. Code Ann. Section 62-5-501)
- ☐ spouse of protected person
- ☐ adult child of protected person
- ☐ parent of protected person or person nominated by Will of deceased parent
- ☐ other relative of protected person
  (specify):

_____

- ☐ person nominated by the person who is caring for protected person or paying benefits to him/her
- ☐ nominated by one with priority to serve in his/her stead (specify):

_____

- ☐ other (specify): _____

9. The following persons are required by statute to be given notice of the time and place of hearing on this Petition:

Name	Address	Relationship

10. I request that the Court set a time and place of hearing on this Petition; that the Court determine that the above person is a person for whom appointment of a conservator is proper; that the Court appoint _____ as the conservator for the above minor/incapacitated person; and, that Letters of Conservatorship be issued to the conservator.

Executed this _____ day of_____, 20_____.

Signature: _____

VERIFICATION

The undersigned, being sworn, states: That the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief.

SWORN to before me this _____ day of _____ , 20 _____

_____
Notary Public for South Carolina
My Commission Expires: _____

Signature: _____
Name: _____
Address: _____
_____
E-mail: _____
Telephone (O): _____
(H): _____

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Conservator of the conservatorship of _____

Executed this _____ day of _____, 20_____.

SWORN to before me this _____ day of _____ , 20 _____

_____
Notary Public for South Carolina
My Commission Expires: _____

Signature: _____
Name: _____
Address: _____
_____
E-mail: _____
Telephone (O): _____
Telephone (H): _____

Signature: _____
Name: _____
Address: _____
_____
E-mail: _____
Telephone (O): _____
Telephone (H): _____

Signature: _____
Name: _____
Address: _____
_____
E-mail: _____
Telephone (O): _____
Telephone (H): _____

It should also be noted that in order to obtain a Sled Report for either of the above mentioned situations, one must make a written request for the criminal report from SLED at P.O. Box 21398 Columbia, SC 29221-1398. One is also required to provide SLED with the Proposed Guardian's full name including maiden and alias names; date of birth, sex, race, and social security number. Moreover, a $25.00 business check, certified check, money order, or cashier's check, and a self addressed envelope must be included for each search. One also has the option to pay for each search with their credit card and make an internet request at **www.sled.state.sc.us.**

A credit report on the other hand can be obtained by filling out the credit history report written request at Equifax, P.O. Box 105252 Atlanta, GA 30348-5252, or by calling 1-800-685-1111. Equifax's emergency fax request line can also be accessed by dialing (770) 375-3150. Equifax also offers the option to contact them via the internet at www.equifax.com.

A second credit reporting organization is TransUnion, which can be contacted by written request at P.O. Box 1000 Chester, PA 19022, or by calling them direct at 1-800-888-4213. TransUnion can also be contacted via the internet at www.transunion.com. TransUnion requires one to provide their

agency with the proposed conservator’s driver's license number, social security number and date of birth.

Once a conservator is appointed, within thirty days they are required to file an Inventory and Appraisement (Form 550PC). The conservator in question is also required to annually report (Form 560PC) to the Court, along with the income, approved disbursements, account statements, and receipts of expenditures. The Court in question is required to approve expenditures from the restricted accounts once the conservator has filed the appropriate Petitions for Expenditures along with supporting documentation. The conservator in question should also inform the Court as to the whereabouts of the incapacitated adult/minor, and the Court has the authority to appoint visitors and guardian ad litems to check on the incapacitated adult or minor.

These actions are methods the Court exercises to make certain that the conservator in question is performance in the best interest of the protected person. Lastly, Letters of conservatorship and orders terminating conservatorship, must be filed and recorded in the office where conveyance of real estate are recorded for the county in which the protected person resides and or owns real estate.

FORM 550PC

STATE OF SOUTH CAROLINA PROBATE COURT

COUNTY OF

IN THE MATTER OF

CASE NUMBER

INVENTORY AND APPRAISEMENT

☐ **ORIGINAL**
☐ **SUPPLEMENTAL #** ____

Conservator: _____

The undersigned, being sworn, states: That the following schedules contain a complete and accurate inventory and appraisement of all real and personal property of this estate so far as the undersigned is informed; that he/she has estimated and/or appraised all listed property at its fair market value, according to the best of his/her knowledge and ability.

Copies of this inventory have been sent to the following persons:*

____

SWORN to before me this _____ day of _____, 20 _____

_____
Notary Public for South Carolina
My Commission Expires: _____

Signature: _____
Name: _____
Address: _____
_____
Telephone (O): _____
(H): _____

The gross fair market valuation of all assets, regardless of situs, should be given as of the date of appointment. List all out-of-state assets on appropriate schedules. A Supplemental Inventory should be utilized for correcting, adjusting, or adding to an original inventory.

The type and amount of any encumbrances that may exist with reference to any item should be disclosed.

RECAPITULATION

Schedule A - Real Estate	_____
Schedule B - Investments	_____
Schedule C - Anticipated Annual Receipts	_____
Schedule D - Life Insurance	_____
Schedule E - Jointly Owned Property	_____
Schedule F - Other Miscellaneous	_____
Schedule G - Transfers prior to incapacity	_____
Schedule H - Powers of Appointment	_____
Schedule I - Annuities	_____
TOTAL GROSS VALUE	$ _____
ENCUMBRANCES	(_____)
TOTAL NET WORTH	$ _____

*Within thirty (30) days following appointment, the original inventory shall be filed with the Probate Court. A copy must be provided to the protected person, if he/she has attained the age of 14 years, and to any parent or guardian with whom the protected person resides and to other interested persons as directed by the Court.

NOTE: WHEN COMPLETING THE FOLLOWING SCHEDULES, PLEASE REMEMBER TO LIST ALL ASSETS, REGARDLESS OF SITUS; ALL OUT-OF-STATE ASSETS MUST BE DISCLOSED.

SCHEDULE A - Real Estate (If none, so state.) List interest in real property except those held with right of survivorship. **(See Schedule E).** If real property is income producing, report income on Schedule C.

Item No.	Description - Include location, tax map number and use made of property (e.g., rental, owner-occupied)	Property, insurance carrier & Amount of Insurance	Type of ownership and Percentage Interest (e.g., fee simple, tenants in common)	Fair Market value of Protected Person's Interest

TOTAL SCHEDULE A
(also enter under recapitulation, page 1) $ _____

SCHEDULE B - Investments (If none, so state) List stocks, bonds, notes, receivables, checking and savings accounts, certificates of deposit, mutual funds, retirement accounts, etc. If investments produce income, report income on Schedule C. List investments held with right of survivorship on Schedule E.

Item No.	Description of Shares	Include kind of investment, location and number	Type of ownership and percentage interest	Fair Market Value

TOTAL SCHEDULE B
(also enter under recapitulation, page 1) $ _____

SCHEDULE C - Anticipated Annual Receipts (If none, so state.) List all income, including social security, workers compensation benefits, annuities, retirement interest income, rental income, alimony, disability benefits, dividends, royalties, etc.

Item No.	Description	When received (monthly, quarterly, annually, etc.)	Annual Amount

TOTAL SCHEDULE C
(also enter under recapitulation, page 1) $ _____

(If more space is required, insert tax schedules or additional sheets of same size.)

SCHEDULE D - Life Insurance owned by the Protected Person. (If none, so state.) Specify type of insurance, e.g., "whole life," "universal life," or "term." If there are loans against the policy, so indicate.

Item No.	Description - type, company, name, policy number, premium amount	Insured	Beneficiary	Face Value	Cash Value

TOTAL CASH VALUE
(also enter under recapitulation, page 1) $ _____

Other Insurance - Health, Disability, Supplement, Long Term Care

Item No.	Description - type provided	Company Name	Policy Number	Coverage	Premium Amount	When Payable

SCHEDULE E - Property owned jointly with right of survivorship (if none, so state.)

Item No.	Description - include kind, location and co-owner(s)	Appraised Value(s)	Percentage Ownership	Value of Protected Person's Interest

TOTAL SCHEDULE E
(also enter under recapitulation, page 1) $ _____

(If more space is required, insert tax schedules or additional sheets of same size.)

SCHEDULE F - Miscellaneous Personal Property - (If none, so state.) List tangible personal property items, title assets, employment bonus or award, interest in a partnership or unincorporated business, articles or collections having either artistic or intrinsic value, etc.)

Item No.	Description	Location	Value of Protected Person's Interest

TOTAL SCHEDULE F

(also enter under recapitulation, page 1) $ _____

(If more space is required, insert tax schedules or additional sheets of same size.)

SCHEDULE G -Transfers Within Three Years of Incapacity -Transfers intended to take effect at death. United States Government Bonds "Payable on Death". Trust created by Incapacitated Person prior to incapacity in which income for life was retained. Power to revoke or other incidents of ownership retained, life insurance transfers. Lifetime transfers of real property in which Incapacitated Person retains a life estate or other incidents of ownership. (If none, so state.)

Item No.	Description	Value

TOTAL SCHEDULE G

(also enter under recapitulation, page 1) $ _____

(If more space is required, insert tax schedules or additional sheets of same size.)

SCHEDULE H - Powers of Appointment - Property, both real and personal, over which Incapacitated Person possesses a Power of Appointment whether Testamentary or otherwise. (If none, so state.)

Item No.	Description	Value

TOTAL SCHEDULE H
(also enter under recapitulation, page 1) $ _____

SCHEDULE I - Annuities (If none, so state.) (IRA's, Keogh's, etc.)

Item No.	Description & Name of Beneficiary	Value

TOTAL SCHEDULE I
(also enter under recapitulation, page 1) $ _____

(If more space is required, insert tax schedules or additional sheets of same size.)

ENCUMBRANCES - (e.g., mortgages, liens, judgments, etc., but not general debts of the estate) - List specific assets encumbered

Item No.	Schedule & Item Number Encumbered Thereby	Description & Amount

TOTAL ENCUMBRANCES
(also enter under recapitulation, page 1) $ _____

(If more space is required, insert tax schedules or additional sheets of same size.)

FORM 560PC

STATE OF SOUTH CAROLINA)
)
COUNTY OF:)
)
IN THE MATTER OF:)
)

IN THE PROBATE COURT

CONSERVATOR ANNUAL ACCOUNTING

CASE NUMBER:

The undersigned Conservator submits this accounting, which covers the period from _____ through _____ .

The attached documentation sets forth a complete accounting for the period specified, which is summarized as follows:

	Income	Principal	Total*
Beginning Balance	_____	_____	_____
Plus: Receipts	_____	_____	_____
Subtotal	_____	_____	_____
Less: Disbursements	_____	_____	_____
Ending Balance	_____	_____	_____

*If a consolidated accounting, use this column.

The Conservator represents that this account contains a correct statement of all receipts and disbursements that have come to the Conservator's knowledge.

The Conservator declares that this account has been examined and that its contents are true to the best knowledge and belief of the Conservator.

Executed this day of , 20 .

SWORN to before me this _____ day of _____ , 20 _____

_____
Notary Public for South Carolina
My Commission Expires: _____

Signature: _____
Name: _____
Address: _____
_____
Telephone (O): _____
(H): _____

In view of these facts, an individual with an interest to petition to be a conservator should seek the assistance of a lawyer; because, due to the legal complexities of the Summons and Petition, the requirements of proper legal service on all interested parties including proper service on the alleged incapacitated adult, and the need for proper notice of the hearing to all interested parties, the Court in question recommends that the proposed Petitioner have an attorney. The State law specifies the venue; i.e., where the proceedings are to take place. The venue for conservatorship proceedings will be in the county where the incapacitated person resides. Even if the person is or is not a South Carolina resident the venue can be in any county where the person in question owns property. What is more, an attorney is needed because they are appointed as the Guardian Ad Litem and is involved in the intricate details of the proceeding. Moreover, due to a recent policy change, the Court in question now selects the Guardian ad Litem for all incoming cases from a rotating list of attorneys in good standing with the South Carolina Bar that are willing to serve in this capacity. Also, due to the intricate nature of the proceedings and the allegations that the adult in question is incapacitated and cannot handle their financial affairs, the Probate Court deems it necessary to appoint an attorney for the alleged incapacitated adult. It is also important to note that

an attorney is always needed to represent the interest of a minor; serving a dual role as both Guardian ad Litem and Counsel for the incapacitated adult and minor. The attorney in question is also required to investigate the need for the conservatorship as well as the proposed conservator's ability to adequately serve the best interest of the incapacitated person.

A surety bond, which is similar to an insurance policy for the minor or incapacitated person in question, conditioned on the conservator carrying out their duties faithfully and appropriately, is required for the appointment of a conservator. A surety bond is almost always required for adults with ongoing monthly expenditures. Thus, to alleviate the annual expense of the surety bond, a South Carolina Probate Court often allows the conservator to open a restricted brokerage account. As a result, the financial institution that accepts the conservatorship funds in a restricted account is required to execute a Restricted Account Agreement with the Court in question. The Restricted Account Agreement states that funds will not be disbursed and assets will not be sold without an Order from the Court in question. Both the Conservator and the financial institution are obligated to agree to the terms set forth in the Restricted Account Agreement.

In any event, one’s guardianship automatically terminates when a child reaches the age of majority - sometimes 18, sometimes 21; marries, or enters into a civil union or de facto relationship. Whereas one’s conservatorship status terminates once the minor in question reaches majority, when the capacity of the adult in question changes, or upon the death of the incapacitated person. In any of these cases the conservator is expected to file a final accounting and Petition for Discharge (Form 571PC). Also, when death is the reason for terminating one’s conservatorship status, then a death certificate should be provided along with proof that a Personal Representative has been appointed. The Court will then issue an Order for the transfer of assets to either the minor that has reached majority, to the individual that is no longer incapacitated, or to the Personal Representative of the decedent's estate. Moreover, a Receipt and Release shall be filed within ten (10) days of the release of assets. Also, a hearing may be held before the assets of the estate are distributed. Lastly, letters of conservatorship, and orders terminating conservatorships shall be filed and recorded in the office where conveyances of real estate are recorded for the county in which the protected person resides and in the other counties where the protected person owns real estate. Nevertheless, from then on, any property left to a child is exclusively owned and controlled by the child

in question. Therefore, leaving a significant amount of assets in the form of cash to a child can be an unwise choice. With this being said one should consult an attorney and determine if it would be advantageous to appoint a guardian over their child's property or would creating a trust be in the child's best interest.

A LISTING OF GUARDIANSHIP - CHILD CUSTODY ATTORNEYS FOR THE STATE OF SOUTH CAROLINA:

Greenville Family Law
Frank J. Dana III
864-242-0700
1413 Laurens Rd.
Greenville, SC

Alyson Christine Fudge
843-416-1102
1156 Bowman Road, Suite 200
Mt. Pleasant, SC

Paige Weeks Johnson
803-649-5338
P.O. Box 2619
Aiken, SC

Lester Ken H Atty At Law
(843) 524-2700
1 Professional Dr
Port Royal, SC

Sargent Ladonna L Atty
(864) 229-0560
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(803) 771-0901
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